

**PETERSBURG INDIAN ASSOCIATION**

P.O. Box 1418 Petersburg, Alaska 99833

Phone : 907-772-3636/ Fax : 907-772-3637



February 21, 2008

Commissioner Leo Von Scheben:

The Petersburg Indian Association has been working with Andy Hughes for the past several months on various road projects in Petersburg. Andy has been somewhat cooperative at times but Andy and your Tribal lawyer in Fairbanks has asked for things that make our Tribe less than second class Alaskans. I am very frustrated and angry at the way the ADOT has treated us. We are giving \$560,000. of our Tribal roads funds for the Mitkof Highway paving project that ADOT is supposed to do and having an extremely difficult time trying to perform. Our Tribe has the monies in the bank, we have signed this MOA twice, turned down the first two because of language which stated in section "L, PIA will give ADOT \$560,000. and if ADOT does not do the project ADOT keeps the monies". No one runs a business like this unless they are crooks.

I and our Council president have signed this MOA again and notarized it. If this project is held up any longer and does not go out to bid immediately we do not want anything to do with it. Our airport will be shut down for two months this Summer/Fall and this road is our only transportation off our Island to connect with the Inter Island ferry and Wrangell for flights. I have informed Senator Stedman and Representative Wilson Offices regarding this matter and they will get involved if you need further assistance.

I am very sorry to have reacted like this, but I am very tired of giving ADOT monies and being treated like dirt and so is our Tribe. The only reason we don't feel discriminated against is that everyone we talk to is treated equally poorly by ADOT.

John R. Havrilek, Tribal Administrator

**Project Agreement  
Between the  
Petersburg Indian Association  
and the**

**Department of Transportation and Public Facilities  
Mitkof Highway and Ferry Terminal Paving Project 68646**

WHEREAS, the DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, hereinafter referred to as the DEPARTMENT owns and maintains Mitkof Highway and the South Mitkof Ferry Terminal on Mitkof Island;

WHEREAS, the DEPARTMENT and the Petersburg Indian Association hereinafter referred to as the TRIBE desire to pave an approximately eight mile section of Mitkof Highway from the existing end of pavement (Crystal Lake Hatchery Road) to the junction of the new South Mitkof Ferry Terminal access road, pave the access road to the ferry terminal, and pave the parking and vehicle staging area hereinafter referred to as the PROJECT;

WHEREAS, the TRIBE has Indian Reservation Road (IRR) funding sufficient to satisfy the federal highway aid matching fund requirement of 9.03% and has offered to provide this funding to the DEPARTMENT to satisfy this match requirement;

WHEREAS, the DEPARTMENT has authority to enter this agreement pursuant to AS 36.30.850(c), AS 44.42.020 and 2 AAC 12.990(d);

NOW THEREFORE, the parties agree as follows:

A. The construction cost estimate of the PROJECT is approximately \$6,155,900 of which \$555,900 would constitute the required 9.03% match. The TRIBE agrees to pay the match component (9.03%) of the PROJECT costs eligible for federal reimbursement up to the amount of \$555,900. PROJECT matching fund requirements in excess of \$555,900 shall be the responsibility of the DEPARTMENT.

Following the award of a contract to the successful bidder, the DEPARTMENT shall bill the TRIBE periodically for the 9.03% match requirement. The TRIBE shall reimburse the DEPARTMENT the matching funds requested by the DEPARTMENT within 30 days of receipt of the DEPARTMENT'S request for payment.

B. The TRIBE warrants that it has the authority to enter this agreement and to expend IRR funds in the manner identified herein. The Tribe specifically authorizes the DEPARTMENT to make financial commitments against \$555,900 in IRR funding in possession of the TRIBE.

C. This Agreement does not establish an agency or employment relationship between the parties.

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D. The general PROJECT description is to pave approximately 8 miles of roadway and pave the ferry terminal access road, parking and staging areas. The PROJECT will include drainage improvements and foundation strengthening where required. The DEPARTMENT has the sole and exclusive authority to control all components of planning, design, procurement and construction of the foregoing PROJECT, and there have been no promises or commitments made with respect to the details of project development. The Department will own and operate all project improvements.

E. For the purposes of this Agreement and all services to be provided hereunder, each party shall be, and shall be deemed to be, an independent contractor and not an agent or employee of the other party. Neither party shall have authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other party, except as may be explicitly provided for herein or authorized by the other party in writing.

F. The parties have a duty to communicate with each other in good faith with regard to this Agreement. TRIBE inquiries may be directed to the DEPARTMENT's Project Engineer assigned to the project. DEPARTMENT communications may be directed to the Tribal Administrator.

G. This Agreement is entered into freely and voluntarily by both parties after joint consultation and after having had a full and fair opportunity to consider its terms and conditions. Both parties have had the opportunity to review this Agreement and to consult with legal counsel. The Agreement shall not be construed for or against either party.

H. Modification or Amendment. This Agreement may only be modified or amended by written agreement signed by both parties' representatives.

I. Third Parties and Responsibilities for Claims. Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the DEPARTMENT and any person performing services or supplying any equipment, materials, goods, or supplies in relationship to this Agreement.

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- J. Delegation/Assignment. The TRIBE may not assign its duties or obligations under this Agreement except by express written consent of the DEPARTMENT. The TRIBE will be liable for its assignee(s) in the same manner and to the same extent under this Agreement as if the TRIBE had engaged in the action, or inaction, of the assignee(s). An assignment or delegation to another tribal entity, if approved, must include a waiver of sovereign immunity from that entity to the state that is equivalent to the waiver included in this Agreement.
- K. Jurisdiction. The TRIBE does not claim ownership or jurisdiction rights of any kind over any portion of this PROJECT, including the highway improvements, ferry terminal access road, parking, or staging areas. The TRIBE will not at any time claim or attempt to exercise jurisdiction of any kind over these facilities or the activities of any person or entity undertaken on or within these facilities based upon this Agreement or actions taken by the TRIBE or the DEPARTMENT pursuant to this Agreement. Acceptance by the DEPARTMENT of IRR funds or any other funds authorized under 23 CFR Part 170 will not in any manner affect the DEPARTMENT'S sole and exclusive title and jurisdiction over PROJECT facilities, related rights-of-way thereof or any improvements thereto (including, but not limited to, the improvements made to eight miles of roadway, or to the ferry terminal access road, parking or staging areas). The TRIBE agrees to take no actions with respect to or affecting these facilities without express written consent from the DEPARTMENT.
- L. Federal Funds Eligibility. The TRIBE certifies that the match funds are eligible for participation for the purposes noted above and that the TRIBE has undertaken adequate due diligence prior to signature of this Agreement to ensure no eligibility disputes with the BIA or the FHWA. In order for the Department to accept the funds identified in paragraphs A and B above, the Tribe must provide documentation from the FHWA and the BIA verifying that the funds can be expended on the PROJECT and that the funds can be used for the purposes described in this agreement. The TRIBE agrees that it will be solely responsible for resolving any disputes with the BIA, the FHWA, or other federal agency in the event of any funding ineligibility determinations. The TRIBE further agrees that, in the event of a funding ineligibility determination by the BIA or FHWA, the TRIBE will not seek reimbursement of funds advanced under paragraphs A or B of this Agreement that have been obligated or earned by the DEPARTMENT as of the date the DEPARTMENT is advised by the TRIBE in writing of the ineligibility determination.
- M. Sovereign Immunity Waiver. The TRIBE hereby irrevocably waives its sovereign immunity and consents to suit for the limited purpose of allowing the State of Alaska to seek legal and equitable remedies against the TRIBE in Alaska state courts alleging a breach of this Agreement or naming the Tribe as a third-party

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defendant in an action brought by a person or government agency against the State for acts or omissions that the State alleges are the fault of the Tribe arising under or related to this Agreement. If the State is determined to be the prevailing party in the law suit, this consent includes an award of allowable costs, pre-judgment and post judgment interest, and attorney's fees as allowed by law. This consent also includes the entry and enforcement by levy and execution or otherwise of judgments, orders or injunctions entered against the TRIBE in state court in such an action. Levy and execution may be made against the TRIBE'S assets wherever located and whether owned in the name of the TRIBE, Tribal Council, a Tribal corporation or other Tribal entity. If the TRIBE sues the State alleging a breach of this Agreement, this waiver and consent to levy and execution shall encompass any defenses, offsets or compulsory counterclaims that the State may assert against the TRIBE. This waiver does not include any action seeking punitive damages against the TRIBE. This waiver does not include any action filed by third parties directly against the TRIBE.

N. Whole Agreement. This Agreement constitutes the entire agreement between the parties. There are no other understandings or agreements between the parties, either oral or memorialized in writing regarding the matters addressed in this agreement. No oral understandings or agreements not incorporated herein shall be binding on any of the parties hereto.

**Petersburg Indian Association**

Approved: [Signature] Date Feb 21, 2008  
John Havrilek, Tribal Administrator

The parties hereto have executed this permit as of the date it is signed by the State.

**PETERSBURG INDIAN ASSOCIATION**  
**IRA COUNCIL**

By: [Signature]  
Printed Name William M. M. C.  
Title: Chairperson

State of Alaska )

**ACKNOWLEDGMENT**

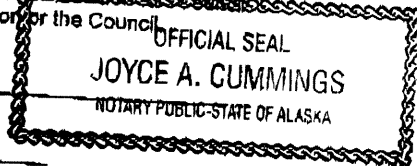
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First Judicial District )ss  
)

THIS IS TO CERTIFY that on the 21<sup>ST</sup> day of FEB, 2007, the foregoing Agreement with attached IRR TCP was signed and acknowledged before me by William A. Wall (name), Chair Person (title) of the PETERSBURG INDIAN ASSOCIATION IRA COUNCIL, who swore, under oath or affirmation, that:

(1) he/she is acting on behalf of the Council and under the constitutional authority of the Petersburg Indian Association (Association), (2) he/she has the authority to sign for and bind the Association, and all Council and Association officials, employees and successors to the commitments and conditions of this Agreement, including, but not limited to, the waiver of sovereign immunity included in the Agreement, and (3) the Council and the Association fully complied with all current procedure and requirements necessary to validly authorize his/her signature on this Agreement and to waive the Association's sovereign immunity whether those procedures or requirements are contained in the most recent versions of the Association Constitution, constitutional bylaws, rules adopted under the Constitution, the Record of Organization of the Association (if any), the Association's ordinances, or any other rules of the Association or the Council.

Joyce A. Cummings  
Notary Public in and for Alaska  
My Commission expires: 7/17/2011



PETERSBURG INDIAN ASSOCIATION  
IRA CORPORATION

By: [Signature]  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGMENT

State of Alaska )  
First Judicial District )ss  
)

THIS IS TO CERTIFY that on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, the foregoing permit was signed and acknowledged before me by \_\_\_\_\_ (name), the \_\_\_\_\_ (title) of the PETERSBURG INDIAN ASSOCIATION, a federally chartered IRA Corporation, and swore, under oath or affirmation, that:

NO LONGER EXISTS

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(1) he/she is acting on behalf of the Corporation and under the authority of the "Corporate Charter of the Petersburg Indian Association," (2) he/she has the authority to sign for and bind the Corporation, its officials, employees and successors to the commitments and conditions of this Agreement, including, but not limited to, the waiver of sovereign immunity, and (3) the Corporation, prior to signing this Agreement, fully complied with all current procedure and requirements necessary to validly authorize his/her signature on this Agreement and to waive the Corporation's sovereign immunity whether those procedures or requirements are contained in the most recent versions of the Corporation's charter, Corporate bylaws, rules or policies adopted by the Corporation, or any other rules or requirements of the Corporation or the Council of the Petersburg Indian Association.

Notary Public in and for Alaska  
My Commission expires: \_\_\_\_\_

**Department of Transportation and Public Facilities**

Approved

*Malcolm A. Menzies*  
Malcolm A. Menzies, P.E., L.S., Regional Director

Date

*2/21/08*



State of Alaska  
Notary Public  
KELLY HARP

My Commission Expires *W/office*

*Kelly Harp*